

CONVERTING INHERITANCE RIGHT INTO SAVING AND LOAN FORM
IN *MASLAHAH* PERSPECTIVE
(CASE STUDY IN GELURAN, TAMAN, SIDOARJO)

Thesis

By:

Irfan Amiruddin

Student ID Number 11210036



AL-AHWAL AL-SYAKHSHIYYAH DEPARTMENT
SHARIA FACULTY
THE STATE ISLAMIC UNIVERSITY
MAULANA MALIK IBRAHIM MALANG

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2015



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(CASE STUDY IN GELURAN, TAMAN, SIDOARJO)

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C. RUMUSAN MASALAH

1. What are the advantages and disadvantages of converting inheritance right into saving and loan form?
2. How does *masalahah* view on converting inheritance right into saving and loan form?

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**CONVERTING INHERITANCE RIGHT INTO SAVING AND LOAN
FORM IN *MASLAHAH* PERSPECTIVE (CASE STUDY IN GELURAN,
TAMAN, SIDOARJO)**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

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**CONVERTING INHERITANCE RIGHT INTO SAVING AND LOAN
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DEDICATION SHEET

This thesis is dedicated to the State Islamic University
Maulana Malik Ibrahim Malang for the best educations.

This thesis is dedicated to my father
who works hard for my excellent education.

It is also dedicated to my mother
who teaches me everytime and gives motivations.

MOTTO

”وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ”

“Answer the call of their Lord, establish *shalat*, conduct their affairs with mutual consultation, spend out of the sustenance which We have given them.”

(QS: Asy-Syûra Verse: 38)

Dr. Zaenul Mahmudi, M.A.

The lecturer of Sharia Faculty

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OFFICIAL NOTE OF SUPERVISOR

As For : Irfan Amiruddin's Thesis

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Appendix : 1 (One) Copy

To The Honorable.

The Dean of Sharia Faculty of State Islamic University Maulana Malik Ibrahim

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Assalamu'alaikum Wr. Wb.

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Geluran, Taman, Sidoarjo)

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Supervisor, April 09, 2015

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STATEMENT OF THE AUTHENTICITY

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the researcher declares that the thesis entitled:

CONVERTING INHERITANCE RIGHT INTO SAVING AND LOAN FORM IN *MASLAHAH* PERSPECTIVE (CASE STUDY IN GELURAN, TAMAN, SIDOARJO)

is truly the researcher's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, April 16, 2015
Researcher,

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ACKNOWLEDGEMENT

Bismillaahirrahmaanirrohiim

All Praises to Allah, because of his blessing, favor, and guidance, the researcher can finish the thesis entitled “Converting Inheritance Right Into Saving And Loan Form in *Maslahah* Perspective (Case Study In Geluran, Taman, Sidoarjo)”. *Wassalatu was salam ‘ala Rasulillah*, for his teachings which shows the bright way for our lives and accompany to the happiness in the world and the hereafter.

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For all sincerity and goodwill, the reseacher says many thanks, hopefully with the helps, guidances and instructions that were given to good works and may Allah shower them with His blessings.

Furthermore, the reseacher realizes that this thesis is far from a perfect writing, there are still many mistakes that should be corrected. Therefore suggestions and advises from various parties really appreciated and expected by reseacher, and hopefully the result of this study could be useful for those in need. Finally, only to Allah, reseacher wishes forgiveness and atonement.

Malang, April 15, 2015

Researcher,

Irfan Amiruddin
Student ID Number 11210036

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ABSTRACT

Irfan Amiruddin, 11210036, 2015, *Converting Inheritance Right Into Saving And Loan Form In Maslahah Perspective (Case Study In Geluran, Taman, Sidoarjo)*, Thesis. Al-Ahwal Al Syakhshiyah Department, Sharia Faculty, State Islamic University of Maulana Malik Ibrahim Malang, Supervisor: Dr. Zaenul Mahmudi, M.A.

Keywords: *Maslahah*, Converting Inheritance Right, Saving and Loan

Based on the Quran, the inheritance distribution is performed after deceased passed away. Then, the property is given to the heirs automatically. So, every heir has the right to possess the property. But, one of the families in the Village of Geluran, Taman, Sidoarjo made an agreement that heirs do not obtain the right to possess the property (the money). Their right was converted into saving and loan form. All their's share was given to the deceased's eldest son, and the money was saved by him. Any time, the heirs can borrow the money and return it when he/she is capable. The inheritance distribution does not limit the return time and it does not also set the interest. The inheritance distribution becomes a case that is researched because it has different way based on the Islamic law of inheritance. This research formulates the problems, namely: 1) Why do people convert inheritance right into saving and loan form? And 2) How does *maslahah* view on converting inheritance right into saving and loan form?

The research uses empirical research (field research) and qualitative approach that based on descriptive analysis. Locus of the study is in the Village of Geluran, Taman, Sidoarjo. The research uses primary and secondary data. The primary data is the interview to the informant (the heirs). The secondary data are written documents, books, previous researches, regulations that related to the thesis title. Especially, the researcher needs the books that talk about the concept of Islamic Law of Inheritance and *maslahah*. Furthermore, the *maslahah* of Najamuddin at-Thufi's view is the tool analysis of the research. His concept is used as basic theory to discuss the finding facts. The discussion aims to obtain the result of the research correctly and theoretically.

The research provides the conclusion that the reason to convert the inheritance right into saving and loan form has three advantages and two disadvantages. The advantages are: 1) to help the heir who needs fund, 2) to prevent the disunity among heirs, and 3) to create more harmonious family relationship. Then, the disadvantages are: 1) the eldest son must patch the money when it is zero and 2) all heirs have no right to possess the money. Furthermore, based on the *maslahah* of Najamuddin at-Thufi's view, the inheritance distribution can maintain the purpose of Islamic law namely *maslahah*. Najamuddin at-Thufi affirms that human can refuse the *nash* if it contradicts to the *maslahah*. The inheritance distribution is *muamalah* issues that included to the human's right. At-Thufi confirms that the *maslahah* only comes from the reason. He places the reason higher than Quran and hadith. So, if the heirs' reasons look the converting of inheritance right into saving and loan form as a *maslahah*, then it must be maintained.

ملخص البحث

عرفان أمير الدين، 11210036، 2015، تحويل حق الإرث إلى المدخرات و القروض في نظرية المصلحة (دراسة قضية في قرية كلوران، بالتمان بمحافظة سيدوارجو). بحث جامعي، شعبة الأحوال الشخصية في كلية الشريعة بجامعة مولانا مالك إبراهيم الإسلامية الحكومية بمالانج. المشرف: الدكتور. زين المحمود، الماجستير.

الكلمة الرئيسية: مصلحة، تحويل حق الإرث، المدخرات و القروض.

أن أداء تقسيم الإرث بعد وفاة الوارث كما قد استند القرآن الكريم. وعطيت أموال الإرث تلقائياً إلى وريث. فكل وريث له حق لتمليك أموال الإرث. ولكن إحدى من عائلات في قرية كلوران بالتمان بمحافظة سيدوارجو اتفقت بأن وريث ليس له حقاً في تمليك أموال الإرث. و تم تحويل حق الإرث إلى المدخرات و القروض. وأعطيت جميع قسمة من أموال الوريث إلى ابن الأول للوارث و دخرها. في يوم ما يمكن للوريث الاقتراض على الأموال و يراجعها على قدره. هذه القسمة لا تحد وقت العودة للأموال و لا يثبت الزيادة. أصبحت هذه القسمة ذو قيمة للبحث لأن فيه اختلاف بطريقة تقسيم الميراث في شريعة الإسلام. فلهذا البحث أسئلتهان، هما: (١) لماذا يفعل الناس تحويل حق الإرث إلى المدخرات و القروض؟ و (٢) كيف نظرية المصلحة في تحويل حق الإرث إلى المدخرات و القروض؟

هذا البحث من البحوث التحريبي (بحث ميداني) و مدخل النوعي يقوم على تحليل الوصفي. موقع بحثه في قرية كلوران بالتمان بمحافظة سيدوارجو. واستخدم هذا البحث البيانات الأولية و البيانات الثانوية. بيانات الأولية المستخدمة هي المقابلة من مخبر (the heirs) و بيانات الثانوية المستخدمة هي الوثائق المكتوبة و الكتب و دراسات السابقات و نظوم الملائمة بعنوان البحث خاصة ما تتحدث فيها مفهوم حكم الإرث الإسلامي و المصلحة. و نظرية مصلحة نجم الدين الطوفي هي آلة لهذا البحث. استخدم مفهومها أساساً نظرية للمناقشة بحقائق الموجودة هدفاً ليحصل على النتيجة الصحيحة و النظرية.

الخلاصة من هذا البحث هي السبب لتحويل حق الإرث إلى المدخرات و القروض له ثلاث مزايا و عيبان. مميزات هي: (١) لسعادة الوريث الذي يحتاج عليه الأموال، (٢) ليحذر الانشقاق بين الوريثين، (٣) ليجعل العلاقة الأسرية المتناغمة. و عيوبه هي: (١) لازم على ابن

الأول أن يملأ أموال الإرث الفراغة، ٢) كل من وريث ليس له حق التملك للأموال الإرث. و استنادا بنظرية مصلحة نجم الدين الطوفي، طريقة تقسيم الإرث المذكورة تستطيع أن تحفظ الغرض في شريعة الإسلام يعني المصلحة. أكد نجم الدين الطوفي بأن الناس يجوز أن يرفض النص إذا اختلف النص بالمصلحة. ذلك تقسيم الإرث هو الأمر المعاملة وهو من حق الإنسان. و أكد الطوفي بأن المصلحة من العقل و وضعه أعلى من القرآن و الحديث. فإذا نظر العقل تحويل حق الإرث إلى المدخرات و القروض كالمصلحة، فيجب أن يدفع عنه.

ABSTRAK

Irfan Amiruddin, 11210036, 2015, *Konversi Hak Waris Menjadi Simpan Dan Pinjam Dalam Perspektif Masalah (Studi Kasus Di Desa Geluran, Kecamatan Taman, Kabupaten Sidoarjo)*. Skripsi. Jurusan Al-Ahwal Al-Syakhshiyah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing: Dr. Zaenul Mahmudi, M.A.

Kata Kunci: *Maslahah*, Konversi Hak Waris, Simpan Dan Pinjam

Berdasarkan pada al-Quran, pembagian waris dilaksanakan setelah meninggalnya pewaris. Selanjutnya, harta waris tersebut diberikan kepada ahli waris secara otomatis. Maka, setiap ahli waris mendapatkan hak untuk memiliki harta waris. Namun, salah satu keluarga di Desa Geluran Kecamatan Taman Kabupaten Sidoarjo, membuat suatu kesepakatan bahwa ahli waris tidak mendapatkan hak untuk memiliki harta waris (uang waris). Hak warisnya dikonversikan menjadi simpan dan pinjam. Seluruh bagian uang ahli waris diberikan kepada anak pertama pewaris, selanjutnya uang tersebut disimpan oleh anak pertama. Suatu saat, ahli waris dapat meminjam uang tersebut dan mengembalikannya ketika sudah mampu. Pembagian waris ini tidak membatasi waktu pengembalian uang dan juga tidak menetapkan bunga. Pembagian waris ini menjadi kasus yang diteliti karena terdapat perbedaan cara pembagian menurut hukum waris islam. Penelitian ini merumuskan masalah-masalah, yakni: 1) mengapa orang-orang mengkonversi hak waris menjadi bentuk simpan dan pinjam? dan 2) Bagaimana masalah memandang konversi hak waris menjadi bentuk simpan dan pinjam?

Penelitian ini menggunakan penelitian empiris (penelitian lapangan) dan pendekatan kualitatif yang berdasarkan pada analisis deskriptif. Tempat penelitian di Desa Geluran, Kecamatan Taman, Kabupaten Sidoarjo. Penelitian ini menggunakan data primer dan data sekunder. Data primer yang digunakan adalah wawancara pada informan (the heirs). Data sekundernya adalah dokumen-dokumen tertulis, buku-buku, penelitian-penelitian terdahulu, peraturan-peraturan yang berkaitan dengan judul skripsi. Khususnya, peneliti membutuhkan buku-buku yang berbicara tentang konsep hukum waris islam dan masalah. Selanjutnya, pandangan masalah Najamuddin at-Thufi adalah alat penelitian ini. Konsepnya digunakan sebagai dasar teori untuk mendiskusikan fakta-fakta yang ditemukan. Diskusi tersebut bertujuan untuk mendapatkan hasil penelitian yang benar dan teoritis.

Penelitian ini menghasilkan kesimpulan bahwa alasan mengkonversikan hak waris menjadi simpan dan pinjam mempunyai tiga keuntungan dan dua kerugian. Keuntungannya adalah: 1) untuk membantu ahli waris yang membutuhkan dana, 2) untuk mencegah perpecahan diantara ahli waris, dan 3) untuk menciptakan hubungan keluarga yang lebih harmonis. Kemudian, kerugiannya adalah: 1) anak tertua harus menambal uang waris ketika uang tersebut kosong dan 2) setiap ahli waris tidak punya hak memiliki harta waris. Selanjutnya, berdasarkan pandangan masalah Najamuddin at-Thufi, pembagian waris tersebut dapat menjaga tujuan hukum islam yakni masalah. Najamuddin at-Thufi menegaskan bahwa manusia dapat menolak nash jika nash bertentangan

dengan masalah. Pembagian waris tersebut adalah persoalan muamalah yang termasuk hak manusia. At-Thufi menegaskan bahwa masalah hanya berasal dari akal. Ia menempatkan akal lebih tinggi daripada Quran dan Hadis. Jadi, jika akal ahli waris melihat konversi hak waris menjadi bentuk simpan pinjam sebagai masalah, maka itu harus dipertahankan.